Supreme Court, U.S.
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No. (1)

In The
Supreme Court of the United States

DAVID A. ROBERTS,

Petitioner,

v.

MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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May 19, 2008

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QUESTIONS PRESENTED FOR REVIEW

After a child support obligation was established by a Maine state court in 1981, the Maine initiating court asked a Maryland court to act under URESA, and the Maryland responding court entered judgments in 1983, 1984, and 2001 that each became final without appeal.

(1) Under what circumstances is the judgment of a URESA responding state court given Full Faith and Credit, when that judgment prospectively modifies the prior judgment of the initiating state court?

After a wrongful lawsuit by Maine Department of Health and Human Services ("Maine DHS") to collect from Roberts on the 1981 Maine judgment was dismissed with prejudice by the Maryland responding court in 2001, Maine DHS engaged in predatory and unlawful collection practices that led Roberts to file a civil rights action under 42 U.S.C. § 1983 against Maine DHS, *et. al.*

(2) Under what circumstances may a District Court properly dismiss with prejudice such a 42 U.S.C. § 1983 complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6)?

(3) Does the *Rooker-Feldman* doctrine protect only federal court Defendants, or both Plaintiffs and Defendants, from a federal District Court issuing an order that would have the effect of overturning a final state court judgment?

PARTIES TO THE PROCEEDINGS

The sole Petitioner is David A. Roberts, a natural person.

The eight Respondents are as follows:

Maine Department of Health & Human Services ("Maine DHS")

John Nicholas, individually and in his official capacity as Commissioner of Maine Department of Health and Human Services

Peter Walsh, individually and in his official capacity as Commissioner of Maine Department of Health and Human Services

Kevin W. Concannon, individually and in his official capacity as Commissioner (former) of Maine Department of Health and Human Services

Mark O. Van Valkenburgh, individually and in his official capacity as agent for Maine Department of Health and Human Services

Ingrid B. Lapointe, individually and in her official capacity as agent for the Maine Department of Health and Human Services

Anne-marie Johnson, individually and in her official capacity as agent for the Maine Department of Health and Human Services

Loretta Dumond, individually and in her official capacity as agent for Maine Department of Health and Human Services

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David A. Roberts is a natural person.

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INTRODUCTORY PRAYER

Petitioner respectfully requests that a writ of *certiorari* be granted to review the February 19, 2008 order denying rehearing of the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered on January 9, 2008, which summarily affirmed the District Court dismissal of Roberts' case with prejudice for failure to state a claim under Fed. R. Civ. P. 12(b)(6), by memorandum opinion and order dated January 26, 2007 and the District Court denial of reconsideration by memorandum opinion and order dated April 23, 2007.

OPINIONS BELOW

This Petition stems from the second of two dismissals of Petitioner's Complaint, a civil rights action under 42 U.S.C. § 1983 against Maine DHS, *et. al.* The first dismissal in 2004, under the *Rooker-Feldman* doctrine, was reversed by the Fourth Circuit and remanded to the District Court in 2006, subsequent to this Court's decision in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*[1] In 2007 the second dismissal, for failure to state a claim under Fed. R. Civ. P. 12(b)(6), was affirmed by the Fourth Circuit, leading to this Petition.

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[1] See *Lance v. Dennis*, 546 U.S. 459, 126 S.Ct. 1198, 163 L.Ed.2d 1059 (2006) (citing *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005)). *See also D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482-86, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983) and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16, 44 S.Ct. 149, 68 L.Ed. 362 (1923).

First appeal – reversed and remanded by the Fourth Circuit

The order of the United States District Court for the District of Maryland, Northern Division – Baltimore dated December 17, 2004, dismissing Petitioner's Complaint under the *Rooker-Feldman* doctrine, is unpublished. (App. 40a). The District Court's memorandum opinion is unpublished. (App. 42a).

The order of the United States District Court for the District of Maryland, Northern Division – Baltimore dated January 19, 2005, denying Petitioner's Motion for Reconsideration, is unpublished. (App. 38a).

The per curiam opinion of the United States Court of Appeals for the Fourth Circuit dated May 24, 2006, reversing and remanding the District Court dismissal of Petitioner's Complaint under the *Rooker-Feldman* doctrine, is unpublished, but unofficially reported at 182 Fed. Appx. 201 (4th Cir. 2006). (App. 34a). The Fourth Circuit judgment dated May 24, 2006, reversing the District Court is unpublished. (App. 32a).

Second appeal leading to this Petition

The order of the United States District Court for the District of Maryland, Northern Division – Baltimore dated January 26, 2007, dismissing Petitioner's Complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6), is unpublished. (App. 18a). The District Court's memorandum opinion dated

January 26, 2007 is unpublished, but unofficially reported at 2007 WL 5145353 (D. Md. Jan. 26, 2007). (App. 20a).

The order of the United States District Court for the District of Maryland, Northern Division – Baltimore dated April 20, 2007, denying Petitioner's Motion for Reconsideration, is unpublished. (App. 8a). The District Court memorandum opinion is unpublished, but unofficially reported at 2007 WL 5145354 (D. Md. April 20, 2007). (App. 10a).

The per curiam opinion of the United States Court of Appeals for the Fourth Circuit dated January 9, 2008, summarily affirming the District Court dismissal of Petitioner's Complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6), is unpublished, but unofficially reported at 2008 WL 110916 (4th Cir. Jan. 9, 2008). (App. 3a). The Fourth Circuit judgment dated January 9, 2008 affirming the District Court is unpublished. (App. 6a).

The Order of the United States Court of Appeals for the Fourth Circuit dated February 19, 2008, denying Petitioner's Request for Rehearing is unpublished (App. 1a).

JURISDICTION

The judgment of the Court of Appeals was entered on January 9, 2008. A timely Request for Rehearing was denied on February 19, 2008. This Petition is timely filed according to Supreme Court Rules 13.1 and 13.3. The Court derives jurisdiction from 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The below-referenced Constitutional and Statutory Provisions are set forth in Appendix I, p. 81a.

United States Constitution

The Full Faith and Credit clause of United States Constitution, Article IV, § 1.

Federal Statutes

State and Territorial statutes and judicial proceedings; full faith and credit, 28 U.S.C. § 1738.

The Full Faith and Credit of Child Support Orders Act, 28 U.S.C. § 1738B.

STATE LAWS ADOPTED FROM THE UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT (URESA), AS AMENDED IN 1968

Maryland Statute

Md. FAMILY LAW Code Ann. §§ 10-328 (1984)

Maine Statute

19 M.R.S.A. § 409 (1981).

STATEMENT OF THE CASE

A. Background Facts and Issues

The civil rights case of Petitioner, David A. Roberts ("Roberts"), which arises under 42 U.S.C. § 1983, stems from the predatory and unlawful actions by Maine Department of Health and Human Services ("Maine DHS") to collect money from Roberts, despite that Roberts had paid in full all child support due under an original 1981 Maine judgment, a 1983 Maryland judgment, a 1984 Maryland judgment, and that a Maine DHS collection lawsuit against Roberts in a Maryland state court had been dismissed with prejudice in 2001.

The legal issue presented here – whether the District Court properly dismissed Petitioner's 42 U.S.C. § 1983 claim pursuant to Fed. R. Civ. P. 12(b)(6) – turns upon a definitive answer as to the proper and lawful interpretation of Section 31 of the Uniform Reciprocal Enforcement of Support Act (URESA). Section 31 contains uniform statutory language that has been adopted by all 50 states. Interpretation of Section 31 of URESA is an issue that has been litigated in many states throughout the nation, with different outcomes. In some cases, including this one, application of an erroneous statutory construction of URESA Section 31 to the facts results in an outcome that eviscerates the Full Faith and Credit required by the United States Constitution, Article IV, § 1, and federal law, including the Full Faith and Credit of Child Support Orders Act, 28 U.S.C. § 1738B.

Part of the problem giving rise to this issue is the continual change and evolution to which child support law has been subjected over the past four decades. It continues in a flux. As a result, child support law is a patch-work of state and federal statutes and case law that many learned judges and attorneys do not fully understand. Incomplete understanding by the bench and bar in a dynamic environment of constant change is responsible for producing contradictory – and sometimes chaotic – results, leaving millions of people unable to bring the order to their lives that can only come from a predictable framework of law, consistent with common sense.

A seamless majesty of law consistent with common sense brings stability to the lives of citizens, and society, and is the highest calling of the legal profession. Such a noble concept of law can only be achieved by reconciling apparently contradictory and chaotic tendencies in law, as they arise in individual cases. This objective was lost when the District Court did not properly reconcile the complex interplay of facts and law and dismissed Roberts' case.

This case illuminates the need for decisive guidance from this Court to the state and federal courts about how to harmonize:

> Section 31 of the Uniform Reciprocal Enforcement of Support Act (URESA), as codified in state statutes;
>
> the legal effect of the 1981 Maine judgment that initially established the child support obligation of Petitioner;

the legal effect of the 1983, 1984, and 2001 final judgments of the Maryland responding court;

the legal effect upon these three judgments of the Full Faith and Credit clause of United States Constitution, Article IV, clause 1, and the Full Faith and Credit of Child Support Orders Act, 28 USC § 1738B;

the conduct of Maine DHS, *et. al.*, that denies full faith and credit to those three judgments and led to Petitioner's civil rights Complaint under 42 U.S.C. § 1983 against Maine DHS, *et. al.*; and

the District Court's dismissal of Petitioner's well-pled Complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6), on a legal conclusion that denies full faith and credit to the 1983, 1984, and 2001 final judgments of the Maryland responding court.

Thus, it is imperative that this Petition be granted for this Court to give much needed direction in an area of law that has a direct, personal impact upon not only Petitioner, but also several hundred thousand other citizens, each and every year.

B. The Scope of the Problems Faced by Child Support Obligors Like Roberts

According to a study by the American Coalition for Fathers and Children[2] in November 2000, in 7.5% of cases child support agencies commit the type of error that happened in Roberts' case, namely "failure of the child support agency to correctly update an order with a downward or upward modification or later court ruling."

At about the same time, the federal Office of Child Support Enforcement *FY 2000 Preliminary Data Report*[3] stated the nationwide child support caseload was 17.4 million cases. Applying the 7.5% error rate to the nationwide caseload of 17.4 million cases reveals 1.3 million cases nationwide in FY 2000 in which the child support agency failed to correctly update an order with a downward or upward modification or later court ruling.

C. Roberts' Case is the Quintessence of Many Other Cases

The essence of the Maine DHS position, that they may ignore with impunity the legal effect of three final

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[2] The American Coalition for Fathers and Children is a nationally recognized Washington D.C. based, non-profit advocacy organization dedicated to family law education and reform.

[3] U.S. Department of Health and Human Services, *The Office of Child Support Enforcement Annual Statistical Report for Fiscal Years 1999 and 2000* (visited May 17, 2008) <http://www.acf.hhs.gov/programs/cse/pubs/2002/reports/datareport/>

judgments of a Maryland court, is not just an academic exercise. It has a huge personal impact on the lives of real people, like Roberts, who deeply resent the profound injustice manifest in the blatantly lawless bureaucratic money-grab by state agencies all over America like Maine's DHS. A close look at Roberts' case illuminates the real suffering Maine DHS causes in the name of the law, even as they operate on a policy that ignores elemental precepts of American law such as full faith and credit, merger, bar estoppel, and *res judicata*. When state bureaucracies across the nation like Maine DHS do to others as Maine DHS has done to Roberts - simply refuse to obey the law to collect money that is not rightfully owed – they cause serious financial problems for hundreds of thousands, and possibly millions, of otherwise law-abiding American citizens. And the state agency position is delivered with an "in your face", "we do as we please" arrogance that insults the intelligence of the people they coerce who are simply overpowered by the bureaucratic machine. Might does not make right.

It is important to note that URESA collection cases such as Roberts' are almost always litigated in the state courts, because the architecture of URESA and its successors is designed that way. Appeals of these issues through the state courts to this Court will occur only rarely, if ever. So the federal courts are unlikely to ever address these problems, unless cases like Roberts' civil rights action are allowed to progress through the federal appellate process to this Court. The Roberts case offers this Court a unique opportunity to address these important issues.

In light of the number of support cases outlined above, the scope of the problem is enormous. And it is having a deeply destructive, corrosive effect on the faith average Americans have in their justice system. Americans deserve better from those who administer their system of justice. Granting Roberts' petition gives this Court an opportunity to address the systemic injustice being foisted on hundreds of thousands of Americans by state bureaucrats who otherwise conduct themselves as personally and collectively above the law.

D. An Overview of what Roberts has Suffered from Maine DHS

On January 22, 1981, Roberts was divorced from his former wife, Rosemary H. Petke ("Petke") by judicial decree ("the 1981 Maine divorce judgment") from a Maine state court, Aroostook District Court, District No. n, Division of Southern Aroostook, Maine. This 1981 Maine divorce judgment incorporated the terms of a Property Settlement Agreement ("Agreement") entered into by Roberts and Petke. The Agreement specified terms and conditions of property division, child support, child custody, child visitation, and alimony. The Agreement specified Roberts would pay Petke a total of $360.00 per month as child support. Thus the 1981 Maine divorce judgment also operated as "the 1981 Maine support order."

At the time of entry of the 1981 Maine support order on January 22, 1981, Roberts was a resident of the State of Maine. During the recession of 1981, Roberts closed his machine tool business in Maine and

relocated his residence to his former home state of Maryland in an effort to find work.

On or about February 23, 1981 Petke applied for government financial assistance by requesting, among other things, aid for dependent children though the Maine Department of Health and Human Services ("Maine DHS"). Upon information and belief, Petke assigned her rights to child support to Maine DHS; thereafter, Maine DHS (acting as Petke's subrogee) handled all child support issues with Roberts, while Petke herself continued to handle matters other than child support with Roberts.

On or about March 24, 1982, Maine DHS initiated an action in a Maryland state court seeking modification of child support pursuant to the then-governing interstate child support collection and enforcement regime, the Uniform Reciprocal Enforcement of Support Act (URESA), Title 19 Maine Revised Statutes Ann., §331, *et seq*.

The Aroostook County Superior Court Clerk's Office in Maine (per Julia P. Nelson, Special Deputy Clerk of the Supreme Judicial and Superior Courts, Houlton, Maine), forwarded to Maryland a certified copy of a Petition dated March 17, 1982, filed in that Maine court by Maine DHS against Roberts, along with testimony taken in the State of Maine, a certification from the State of Maine, and a copy of the version of URESA Maine had adopted.

As URESA then existed in Maine, the filing of these documents by the Maine court in the Maryland court was required in order to give the responding state,

Maryland, authority to modify the 1981 Maine order of support. In so doing, the Maine state court relinquished modification and enforcement jurisdiction over Roberts' child support obligations to the Commonwealth of Maryland, pursuant to the authority of URESA, also adopted by Maryland.

Six months prior to the URESA filing, Petke asked the Maine state court for modification of the 1981 Maine divorce judgment as it related to visitation and other items not related to child support, resulting in Maine state court orders regarding matters other than child support on July 8, 1982 and May 17, 1984.

Under these circumstances, Roberts (living in Maryland) was under the jurisdiction of the Maine court as to matters other than child support, and at the same time, under the jurisdiction of the Maryland court on the URESA action Maine DHS had filed in Maryland. So, acting at the behest of its sister court in Aroostook, Maine, the Circuit Court for Wicomico County, Maryland, accepted the Maine's interstate petition for filing on April 14, 1982. The Maryland court then proceeded to exercise subject matter jurisdiction over child support issues and personal jurisdiction over both Maine DHS and Roberts to undertake review and modification of the controlling Maine child support order, exactly as Maine DHS had asked the Maryland court to do.

On January 7, 1983, the Circuit Court for Wicomico County, Maryland, acted upon the Maine DHS petition and entered a judgment prospectively modifying Roberts' child support obligation by suspending payments until Roberts was out of college. Neither

Maine DHS nor Roberts appealed this 1983 Maryland judgment, and it became final ("the 1983 Maryland judgment").

Back in Maine, on February 9, 1984, Petke asked the Maine state court for further modification of terms of the Maine visitation order by filing a Petition in the Maine state court.

On April 12, 1984, Maine DHS again initiated a URESA request in the Maryland state court, asking the Circuit Court for Wicomico County, Maryland to modify Roberts' child support obligation, so while Maine DHS asked the Maryland court to modify the Maine child support order, the Maine court still exercised personal jurisdiction over Roberts regarding visitation.

On April 27, 1984 the Circuit Court for Wicomico County, Maryland again entered its 1984 Maryland judgment based upon the request of Maine DHS, prospectively setting Roberts' child support at $180 per month (up from the $0 amount in the 1983 Maryland judgment, but down from the $360.00 per month in the 1981 Maine support judgment). Neither Maine DHS nor Roberts appealed this 1984 Maryland judgment, and it became final ("the 1984 Maryland judgment").

Over the years following the 1984 Maryland judgment as Roberts' three children grew up, Roberts remained a resident of Maryland and fully complied with the 1984 Maryland judgment, by paying in full all of the child support owed in accordance with 1984 Maryland judgment. Roberts paid all child support obligations under the 1984 Maryland judgment

through the Wicomico County Family Support Division in Maryland, who forwarded the payments to Maine DHS, as specified in the 1984 final judgment, until Roberts' youngest child reached the age 18 on November 12, 1996.

Between the final 1984 judgment of the Maryland court and 1996, the Maryland state court continued to exercise subject matter jurisdiction over Roberts' child support obligation and personal jurisdiction over Roberts, through various court actions in Maryland, including motion practice and entry of Earnings Withholding Orders. To Roberts' knowledge, information and belief, no court has ever entered a judgment against him for past due child or spousal support.

Upon information and belief, on March 31, 1997 Maine DHS caused a federal tax lien to be placed upon Roberts' federal tax refund. The lien was filed with the Clerk of the Circuit Court for Dorchester, Maryland as Maine DHS asserted its position, under the color of state law, that the interstate URESA actions Maine DHS initiated and pursued through the Maryland courts to final judgments in 1983 and 1984 had no effect upon the 1981 Maine support order.

On November 20, 2000 Maine DHS, under the color of state law, filed in the Maryland state court a Uniform Interstate Family Support Act ("UIFSA") action to register, enforce, and collect alleged arrearages from Roberts under the 1981 Maine support order. As filed, Maine DHS, misrepresented the action as an "Initial Request" and did not inform the Maryland court of the prior procedural history and

posture of the case, or even mention the final Maryland judgments from 1983 and 1984.

Having been the initiating party to the Maryland court judgments in 1983 and 1984, Maine DHS knew, or should have known in November 2000, that it could not act under the authority of the 1981 Maine divorce judgment. At the very least, Maine DHS should have disclosed to the Maryland court the existence of the 1983 and 1984 Maryland court judgments obtained through Maine DHS's own petitions.

In support of the November 2000 UIFSA petition, Defendant Valkenburgh executed an affidavit under penalty of perjury that Roberts owed $25,790 in past due child support, which Valkenburgh knew or should have known was false and misleading, because Maine DHS had received all of Roberts' child support payments due under the 1983 and 1984 Maryland judgments. And Roberts' evidence would show he actually had paid Petke more than she was due under the terms of the 1981 Maine support judgment.

Because of Maine DHS' bad faith claim Roberts owed child support arrearage under the 1981 divorce judgment Maine insisted was still operational (after 20 years), on April 18, 2001, the Commonwealth's Attorney for Wicomico County, Maryland filed a Motion to Dismiss the Maine DHS UIFSA action with prejudice, claiming that Maryland had an order with the parties and Maryland had closed its case.

On May 14, 2001 the Maine DHS complaint was dismissed WITH PREJUDICE (emphasis included in original), per Order of the Circuit Court for Wicomico

County, Maryland. Neither Maine DHS nor Roberts appealed this 2001 order of the Circuit Court for Wicomico County, Maryland, and it became final ("the 2001 Maryland judgment").

Despite the 2001 Maryland judgment that dismissed Maine DHS' collection case against Roberts with prejudice, Maine DHS began groundless collection actions. In so doing, Maine DHS violated, and continues to violate Roberts' civil rights under the Fourth Amendment, the Full Faith and Credit Clause of the United States Constitution, the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution, and the requirements of the Full Faith and Credit of Child Support Orders Act, 28 USC § 1738B, by continued collection efforts, the filing of the federal tax lien, the filing of a fraudulent "Initial Request" for child support and continued harassment, including threats of prosecution under the federal non-support act, 18 U.S.C. § 228.

Maine DHS has reported false, adverse information about Roberts' alleged arrears to various national credit bureaus. Maine DHS' unconscionable actions and conscious disregard for the civil rights of Roberts, his family, and others similarly situated, are pursued by Maine DHS to fraudulently obtain U. S. federal financial subsidies and incentives offered to the States for the collection of legitimate child support owed.

In an attempt to collect money from Roberts for a child support obligation he had already paid in full in accordance with the 1981 Maine support judgment and the 1983 and 1984 Maryland judgments, Maine DHS

acted with malice toward Roberts and contempt of the Maryland state court's final judgments. Maine DHS has continued collection actions against Roberts while utterly ignoring the *res judicata* legal effect of the 1983 and 1984 final Maryland court judgments. Maine DHS has caused Roberts irreparable harm and significant actual damages by submitting false and adverse credit information to various credit reporting agencies; by reporting and requesting a federal tax lien on Roberts' federal income taxes with the U.S. Internal Revenue Service; by invading his privacy, in the form of a barrage of dunning letters with written threats of arrest and imprisonment, harassment and attempted intimidation on a repeated basis.

In an effort to put a stop to the repeated, systematic, and wrongful deprivation of Robert's civil rights by Maine DHS acting under color of law, on July 1, 2004, Roberts filed his Complaint for damages and injunctive relief under 42 U.S.C. § 1983 in federal District Court in Baltimore, Maryland.

Despite that Roberts' complaint properly invoked the jurisdiction of the District Court under *28 U.S.C. §1331* and *42 U.S.C. §1983*, on December 17, 2004 (over 5 months from the date Roberts filed the Complaint on July 1, 2004) the Honorable William D. Quarles, Jr., District Judge, ordered Roberts' entire complaint dismissed on the sole ground the District Court lacked subject matter jurisdiction under the *Rooker-Feldman* doctrine. (App. 40a).

After Roberts' Motion to Reconsider was denied by the District Court, Roberts appealed *pro se* to the United States Court of Appeals for the Fourth Circuit

from the order and judgment of dismissal by the District Court (Roberts' first appeal to the Fourth Circuit). (App. 38a). On May 24, 2006 the Fourth Circuit decided Roberts' first appeal with a written opinion and judgment that vacated the judgment of the District Court and remanded the case to the District Court for further proceedings. (App. 32a).

After the mandate of the Fourth Circuit issued on June 19, 2006 and Roberts' case was docketed back in the District Court, Maine DHS renewed their Motion to Dismiss restating the remaining substance of their first Motion to Dismiss back in 2004. Almost 2 ½ years from the date Roberts filed the Complaint on July 1, 2004, on January 26, 2007 the Honorable Judge William D. Quarles, Jr., District Judge, again ordered Roberts' entire complaint dismissed with prejudice for failure to state a claim under Fed. R. Civ. P. 12(b)(6) (a ground that was in Maine DHS' 2004 Motion to Dismiss). (App. 18a). And Maine DHS has yet to file an Answer to Roberts' Complaint.

After Roberts' Motion to Reconsider was denied by the District Court, on May 18, 2007 Roberts filed Notice of his second appeal to the United States Court of Appeals for the Fourth Circuit from the order and judgment of the District Court dismissing his case.

On January 9, 2008 the Fourth Circuit decided Roberts' second appeal with a written opinion and judgment that sustained the judgment of the District Court without explanation. (App. 3a).

REASONS FOR GRANTING THE PETITION

Roberts respectfully submits there are compelling reasons why this Court should grant his petition for writ of certiorari and review the Fourth Circuit's decision.

The Fourth Circuit's decision sustained the District Court's dismissal with prejudice that hinged upon important questions of constitutional and federal law that has not been, but should be settled by the Supreme Court.

A. The Uniform Reciprocal Enforcement of Support Act

The Uniform Reciprocal Enforcement of Support Act (URESA) was enacted to facilitate interstate enforcement of child support obligations. URESA or similar legislation was adopted in all of the United States. It was approved by the National Conference of Commissioners on Uniform State Laws in September 1950, and was adopted by Maryland on June 1, 1951 and by Maine on August 8, 1953.[4] The Act stated that its purposes were to improve, by reciprocal legislation, the enforcement of the duties of support, and to make uniform the law with respect thereto. The goal of improved interstate enforcement of child support obligations had been accomplished, but the law with respect thereto is anything but uniform. The lack of

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[4] URESA was superseded by the enactment of UIFSA in Maryland on January 1, 1997 and in Maine on July 1, 1995. At all times relevant to this case, URESA was in effect and applicable.

uniformity is due, in part, to the fact that state courts have taken different views on how to properly construe various critical sections of the Act. Germane to this case is Section 31 of the Act.

A URESA proceeding is commenced when a person to whom a duty of support is owed (a support obligee) files a petition in a court of the initiating state, the state in which the obligee resides. After determining that a duty of support may exist, the court in the initiating state forwards the petition to a court of the responding state, the state where the parent allegedly owing a duty of support resides (the support obligor). Having obtained subject matter jurisdiction, the court of the responding state must obtain personal jurisdiction over the support obligor, hold a hearing, and determine whether a duty of support exists, and if so, the extent of that duty going forward in time.

Section 31 of URESA states that "a support order made by a court of this state [i.e. the responding state] pursuant to this Act does not nullify and is not nullified by a support order made by a court of substantially similar Act or any other law, regardless of priority or issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by a the court of this state."

B. State URESA Statutes vs. The Full Faith and Credit Clause of the U.S. Constitution

In construing section 31 of the Act, several states have taken the view that a court acting as a responding court in a URESA proceeding may enter a child support order different from that previously ordered in the initiating state. However, some of those states have also found that section 31 of the Act provides that the initiating state is not bound by the terms of a support order of a responding state when the responding state considers a subsequent petition for modification, or calculates arrearages due under the original divorce decree. To reach this conclusion, courts have reasoned that support orders entered pursuant to URESA are not judgments entitled to Full Faith and Credit. The Fourth Circuit Court of Appeals affirmed the District Court decision in this case that dismissing Petitioner's 42 U.S.C. § 1983 action, citing a case construing the Act as just described herein.

Petitioner submits that an interpretation of the Act allowing a court to ignore essential precepts of law pertaining to full faith and credit, *res judicata*, and merger is incorrect, improper, and unconstitutional. As stated in *San Remo Hotel, L.P. v. City and County of San Francisco, Cal.*, "[t]here is simply 'no principle of law or equity which sanctions the rejection by a federal court of the salutary principle of *res judicata*.'" 545 U.S. 323, 401; 125 S.Ct. 2491; 162 L.Ed.2d 315 (2005) (quoting *Heiser v. Woodruff*, 327 U.S. 726, 733, 66 S.Ct. 853, 90 L.Ed. 970 (1946)). The lower courts' decisions in this case upholding an unconstitutional interpretation of the Act results in a manifest injustice for a multitude of Americans subject to this law.

Article IV, § 1, of the United States Constitution demands that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." 28 U.S.C. § 1738, provides that "judicial proceedings ... shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State ...." This statute has long been understood to encompass the doctrines of *res judicata*, or "claim preclusion," and collateral estoppel, or "issue preclusion." See *Allen v. McCurry*, 449 U.S. 90, 94-96; 101 S.Ct. 411; 66 L.Ed.2d 308 (1980). The general rule implemented by the full faith and credit statute is that parties should not be permitted to relitigate issues that have been resolved by courts of competent jurisdiction. *San Remo Hotel, L.P.*, 545 U.S. 323.

In the instant case, after Roberts' child support obligation was created in the 1981 Maine support judgment, Roberts' ex-wife assigned her interest in Roberts' child support obligation under the 1981 Maine support judgment to Maine DHS. Maine DHS then initiated an action in Maine under URESA, followed URESA requirements to transfer jurisdiction to the Maryland courts, actively participated as a party in the Maryland court (by proxy, through their counterparts from the Maryland child support agency), were represented by counsel who litigated the child support issue with Roberts present, accepted the 1983 judgment of the Maryland court that suspended Roberts' child support payments until he finished

college, and let the 1983 Maryland judgment become final without any appeal.

And it happened the same way again in 1984. Maine DHS initiated an action in Maine under URESA, followed URESA requirements to transfer jurisdiction to the Maryland courts, actively participated as a party in the Maryland court (by proxy, through their counterparts from the Maryland child support agency), were represented by counsel who litigated the child support issue with Roberts present, accepted the 1984 judgment of the Maryland court that Roberts' prospective child support payments be $180.00 per month, and let the 1984 Maryland judgment become final without any appeal.

Petitioner fully complied with the 1984 Maryland judgment and paid all child support in full as he had been ordered to do under the 1981 Maine judgment, and the 1983 Maryland judgment. When Maine sought to wrongfully enforce the 1981 Maine judgment in bad faith the 2001 Maryland judgment dismissed Maine DHS' collection action with prejudice.

In 2007, when Maine DHS moved for dismissal of Roberts' Complaint, the District Court, Honorable William D. Quarles presiding, erroneously dismissed Petitioner's complaint for failure to state a claim under Civil Procedure Rule 12(b)(6). In so doing the District Court gave no *res judicata* effect, as a matter of law, to the 1983, 1984 and 2001 Maryland judgment. In support of the dismissal, the court relied on *Weidner v. Weidner*, 553 A.2d 263 (Md. App. 1989). The *Weidner* case is fully analyzed below in subsection D. However, before addressing *Weidner* and the problems it

presents, it is important to analyze a case that is factually on point with the instant case and was decided close in time to Roberts' divorce and his subsequent support proceedings.

C. *Sullivan v. Sullivan* – Harmonizing URESA law with the Full Faith and Credit Clause

In 1981, an Illinois appellate court properly addressed the distinction between a collateral enforcement action for a support order and an action for prospective modification of support. *Sullivan v. Sullivan,* 98 Ill.App.3d 928, 424 N.E.2d 957 (1981). In *Sullivan,* the parties were divorced in New York in 1968. Pursuant to the separation agreement entered into, the husband was to pay $655 per month for child support. Subsequent to the entry of the divorce decree, the wife moved to Illinois and the husband then moved to Ohio. In 1978, an Illinois court increased the father's support obligation to $1,000 per month. Apparently, both parties were present at that hearing in Illinois. In an attempt to collect on the increased support order, the wife then commenced proceedings under URESA in Illinois. The complaint was then forwarded to Ohio, the responding state. However, when the hearing on that complaint took place in Ohio, both the husband and wife were present. At the conclusion of that hearing, the Ohio URESA court lowered the husband's obligation to $600 per month.

In 1980, the wife filed a petition for a rule to show cause in Illinois, which alleged arrearages under the 1978 Illinois order. Nevertheless, after a hearing, the trial court ruled that the responding URESA court, Ohio, had jurisdiction to prospectively modify the prior

Illinois support order. On appeal, that ruling was confirmed. In affirming that judgment the Illinois appellate court stated:

> We find no error in the circuit court's decision to recognize the Ohio order over the previous Illinois order. Following the 1978 Illinois order, Mary properly entered that order in Ohio one month later by means of an URESA complaint. *With both parties present,* the Ohio court concurred in the finding that Daryl was obligated to pay support but it fixed a different amount of prospective support from that set by the initiating court. The law is generally settled that, under URESA, a responding court may enter a new decree for a different amount of prospective child support from that of the initiating court. [Citations omitted.] Specifically, the Ohio court prospectively reduced Daryl's obligation from $1,000 to $600 per month because, contrary to Illinois law, that State refused to recognize inflation and maturation as reasons for increasing support.
>
> We do note, however, that Ohio may well have denied the 1978 Illinois order full faith and credit. It is generally established that one State must recognize a sister State's judgment to the degree that it is nonmodifiable. [Citations omitted.] The law is equally well settled that the second forum must apply to the first forum's law to determine the extent of modification. [Citations omitted.] Accordingly, then, to determine the degree to which the 1978 Illinois decree was modifiable, the Ohio court should

> have referred to Section 510 of the Illinois Marriage and Marriage Dissolution Act (Ill.Rev.Stat.1977, ch. 40, par. 510). That section dictates that a judgment of maintenance or support may not be modified retroactively and may be modified prospectively only upon a showing of changed circumstances. Moreover, courts of Illinois have consistently held that those facts which were the basis of the original decree become *res judicata* and that changed circumstances justifying modification of support must occur since the date of the decree. [Citations omitted.] In the case at bar, however, the Ohio court modified the Illinois decree within one or two months of the Illinois decree and based its ruling upon the same set of circumstances that the Illinois court had used and which had become *res judicata*. Furthermore, from our examination of the record, there was no indication of changed circumstances to justify the 1978 Ohio modification. Thus, although URESA may authorize a responding court to modify the initiating State's decree, the second forum must nonetheless give full faith and credit to the first judgment to the extent that it is nonmodifiable. By refusing to recognize our rules regarding modification, the court modified a judgment which was not subject to modification in Illinois." [98 Ill. App.3d 928, 931-32; 424 N.E.2d 957 (Ill. App. 1981) (Emphasis added).]

The Illinois appellate court then held that it was required to give full faith and credit to Ohio's judgment even though the Ohio court may have failed

to give the 1978 Illinois judgment full faith and credit. The court pointed out that any objections the wife had concerning the Ohio modification should have been directly appealed in Ohio and not collaterally attacked in Illinois. The court then stated: "The United States Supreme Court has long held that 'the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based.' (*Milliken v. Meyer* (1940), 311 U.S. 457, 462, 85 L.Ed. 278, 282-83, 61 S.Ct. 339, 342.)." *Sullivan*, 98 Ill. App. 932; 424 N.E.2d 957.

The *Sullivan* opinion is factually similar to the present matter since the obligor in *Sullivan* was present in the URESA court when the alleged modification of support took place. In the present situation, Maine officials were represented in the Maryland court room. Maine officials had expressly asked the Maryland court to determine a reasonable amount of support and order Roberts to pay it.

The presence of both the obligor and the obligee in the URESA court is a fact that was crucial to the court's decision in *Sullivan*. The *Sullivan* court pointed out specifically that the obligor was present at the time the support payment was prospectively modified. It is evident that the court based its decision on the fact that the obligee had voluntarily subjected herself to the jurisdiction of the responding court by appearing at the Ohio hearing. This conclusion is further supported by the fact that the *Sullivan* court stated that the wife should have directly appealed the reduction in the support order in Ohio rather than an

attempted collateral attack in Illinois. That both parties had the right to direct appeal of the responding court's judgment was a crucial factor in the *Sullivan* opinion that is also present in Roberts' case.

In the case at bar, after Petke assigned her interest in Roberts' child support obligation to Maine DHS in 1981, Maine DHS initiated the action in the Maryland court and participated as a party after following procedures to transfer jurisdiction from the Maine court to the Maryland court. With both Maine DHS and Roberts present as active participants, the Maryland court acted exactly as Maine DHS requested, finding that Petitioner was obligated to pay child support, but fixing a different, lesser amount of prospective support from that set by the initiating court in Maine. The finding of a reduced amount of support was based upon the fact that Roberts' employment changed between the 1981 date of the initial divorce decree in Maine and the 1983 modification in Maryland.

The Maryland action was not a distinct collateral enforcement action for past due installments, as was the situation in *Weidner, infra*. In the instant case, the Maryland state court prospectively modified the Maine support order after it was properly presented to the Maryland court when Maine DHS filed their action in the Maryland court. The Maryland court did not nullify the Maine order as it applied to any past due support installments. Most importantly, Maine never appealed the decision of the Maryland court, and thus – whether right or wrong – the Maryland state court judgment decision became final, and subject to Full Faith and Credit recognition by the Maine court and

Maine DHS, and *res judicata* as to the amount of prospective child support Roberts owed going forward from both the 1983 and 1984 final Maryland court judgments.

D. *Weidner v. Weidner*– An Improper Basis for a 12(b)(6) Dismissal in the Instant Case

The Maryland Court of Appeals case erroneously cited by the District Court as the basis for dismissal of Roberts' case is inapplicable and factually distinguishable. See *Weidner v. Weidner,* 553 A.2d 263 (Md. App. 1989). In *Weidner,* the parties were divorced in Maryland in 1965. The divorce decree ordered the husband to pay to pay $10.00 per week in child support for his dependent son, and $20.00 per week as alimony. Soon thereafter, the husband established his domicile in Florida and stopped making payments for child support and alimony. The wife sought the assistance of the State's Attorney of Baltimore City where she then resided. A petition was filed on behalf of the wife in the Circuit Court for Baltimore City and a certified copy thereof was transmitted to the Circuit Court for the Ninth Judicial Circuit of Florida, in and for Orange County. Invoking Maryland's version of URESA, Maryland sought to enforce the husband's duty to pay child support and alimony. On July 27, 1965, the Circuit Court for Orange County ordered the appellant to pay $20.00 per week as support for "his Dependents, Barbara A. Weidner and Albert Harry Weidner, Jr." without allocating that payment between alimony and child support.

On March 29, 1968, the husband filed a petition, in the same Florida court, for a reduction of his support obligation to $10.00 per week on the ground that his earnings had decreased. Notwithstanding the limited relief sought by the husband in his petition for reduction of his support obligation, the Florida court, without holding a hearing, entered an order modifying support payments owed by the husband. The record of the Florida court proceedings does not reflect that the wife received a copy of the husband's petition for reduction or a copy of the order. It did, however, show that a copy of that order was mailed to the Clerk of the Circuit Court for Baltimore City, Maryland. A URESA proceeding to enforce unpaid alimony support was commenced 19 years later.

The Maryland Appellate court cited the Florida statute which contained the language from Section 31 of URESA and held as follows: "[W]hatever the intent of the Florida court with regard to [husband's] duty to pay spousal support when it entered its somewhat ambiguous orders of July 27, 1965 and April 16, 1968, we hold that the judgment entered by the Circuit Court for Anne Arundel County [Maryland] on April 12, 1965 was not superseded or nullified. Judge Cawood correctly ruled that [the wife] was entitled to enforce that judgment by seeking a lien on the Social Security benefits due appellant." *Weidner v. Weidner,* 553 A.2d at 267. The Court rejected the husband's argument that the hearing court violated the Full Faith and Credit Clause of Article IV of the United States Constitution by "ignoring" the Florida decree. The Maryland court reasoned that "Florida's version of the URESA antisupersession statute, on its face, states that the entry of an order of support by a

Florida court in a URESA proceeding, when Florida is the responding state under the Act, does not supersede the original support order of the initiating state under the Act." *Id.*

Legal research into the value of the *Weidner* case as precedent indicates that a majority of states follow an analysis similar to that in *Weidner*, but the analysis must be qualified. The possibility that *Weidner* reflects a majority view may be misleading because the holding in *Weidner* is overbroad. As such, the *Weidner* opinion easily lends itself to citation as authority in cases to which it should not be applied.

There is no doubt *Weidner* is distinguishable from the facts in Roberts' case. In *Weidner*, the child support obligee did not appear at a modification hearing. In fact, there was no hearing. The child support obligee did not submit to the jurisdiction of the responding state. The child support obligee simply received notice in Maryland of the Florida judgment after the fact, i.e. at some point after the Florida court had already acted to alter the amount of the original obligations. Under these facts, it is proper to still enforce the original Maryland decree ordering support payments. And Petitioner does not challenge the application of Section 31 of the Act when under the *Weidner* facts, but those are far different from the facts in Roberts' case.

The distinction that courts, including the Maryland court in *Weidner*, have failed to make is when both parties appear before the responding court, and the obligor seeks modification based on a change in circumstances (such as reduced income from job loss),

the issues are litigated with both the obligor and obligee actively participating, a judgment is entered that prospectively alters the amount of support obligation consistent with the obligee's new employment and income circumstances, and both parties allow the judgment to become final without appeal.

E. The Fourth Circuit's Affirmation of the District Court's Dismissal Allows for Continued Confusion Amongst States in Child Support Collection Actions

Petitioner has not been permitted to advance his 42 U.S.C. § 1983 case against Maine DHS in response to their bad faith collection efforts on the original 1981 Maine support order. Maine has not even been required to answer Petitioner's Complaint. The District Court judge has been presented with two motions to dismiss and on each occasion has granted the motion. The second District Court dismissal was based on Fed. R. Civ. P. 12(b)(6).

A rule 12(b)(6) motion should be granted only in very limited circumstances. This Honorable Court has explained that "[t]he Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Conley v. Gibson,* 355 U.S. 41, 48; 78 S.Ct. 99; 103, 2 L.Ed.2d 80 (1957). The Fourth Circuit, which summarily affirmed the dismissal of Roberts' case, has long held "that a motion to dismiss for failure to state a claim for relief should not be granted unless it appears to a certainty

that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim." *Johnson v. Mueller,* 415 F.2d 354, 355 (4th Cir.1969) (citation omitted).

In general, URESA only sought to provide a mechanism whereby the orders of one state could be enforced in another state. But URESA did not address the issue of one state "modifying" the orders of another state, which state courts certainly had the power to do under the general equitable powers of state courts, and unusual as it may have been, is certainly what happened under any reasonable interpretation of the facts of this case. Because URESA led to a certain amount of confusion because of different orders in different states, UIFSA and federal laws such as 28 U.S.C. § 1738B tried to clarify this situation and create a "one-order world."

Congress sought to resolve the confusion regarding application of Full Faith and Credit with respect to modification of interstate support orders with enactment of 28 U.S.C. § 1738B in 1994, many years after the 1983 and 1984 final judgments of the Maryland court. Robert's Complaint cited 28 U.S.C. § 1738B as the relevant statute to apply here, and the District Court's Memorandum Opinion does not fully address this issue. The relevant portion of The Full Faith and Credit of Child Support Orders Act states:

> (e) **Authority To Modify Orders**. - A court of a State may modify a child support order issued by a court of another State if -

> (B) each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume continuing, exclusive jurisdiction over the order.

28 U.S.C. § 1738B(e)(2)(B).

By the plain meaning of the words of the prayer in the Maine DHS Petition of March 17, 1982, Maine DHS consented, in writing, to the Maryland responding court setting a "fair and reasonable" amount of support based upon Roberts' employment and income circumstances at the time of the Petition. Their obvious consent is also manifest in that Maine DHS participated, without objection, as a party litigant when the Maryland responding court modified the initial 1981 Maine judgment in 1983 and again in 1984 on the Petition of Maine DHS, did not appeal either the 1983 or 1984 Maryland judgments, and accepted Roberts' subsequent child support payments that fully complied with the terms of the 1983 and 1984 Maryland judgments that Maine DHS themselves had requested.

As far as consent in writing by Roberts, if Roberts had had a crystal ball in 1983 and 1984, and had known exactly what Congress would say on this subject in 1994, he would have been willing to provide such consent in writing, but like Maine DHS, Roberts' consent is manifest in that he participated, without objection, as a party litigant when the Maryland responding court modified the initial 1981 Maine judgment in 1983 and again in 1984, did not appeal

either the 1983 or 1984 Maryland judgments, and fully complied with both the 1983 and 1984 Maryland judgments according to their terms.

Petitioner believes that this controversy would have been resolved with common sense many years ago, if not for the corrupting effects of misguided federal subsidy and incentive programs, and the dollar signs that one can see in the eyes of certain bureaucrats and some lawyers who expect to gain by legalistic sophistry what they cannot gain by due process of law.

Nothing in 28 U.S.C. § 1738B or the Constitution prevents 28 U.S.C. § 1738B from being applied prospectively once Congress clarified Full Faith and Credit issues insofar as they apply to a case such as this. There can be no reasonable doubt that Maine DHS did consent, in writing, to the Maryland court setting "fair and reasonable" support, and according to the plain words of 28 U.S.C. § 1738B, at least since 1994 Maine DHS has been compelled to grant Full Faith and Credit to the 1983, 1984, and 2001 Maryland judgments. There is no good excuse for Maine DHS not to have done so after Congress clarified those issues in 1994. The District Court's Dismissal with prejudice frustrates the clear intent of Congress as codified in 28 U.S.C. § 1738B, insofar as it applies to the facts of this case.

In light of the mandate for Full Faith and Credit unequivocally expressed in the Full Faith and Credit clause of the United States Constitution, Maine DHS is without excuse for ignoring the 1983, 1984, and 2001

Maryland judgments, even in the absence of 28 U.S.C. § 1738B.

The central issue of this case is the intent of the Maine court in forwarding the Petition of Maine DHS dated March 17, 1982 to the Maryland responding court. Petitioner has truthfully alleged that the intent of Maine DHS and the Maine court was that the Maryland court assume modification jurisdiction (Complaint, ppg. 24, 25, and elsewhere), whereas Maine DHS has repeatedly, falsely responded that "the Maine Department of Health and Human Services commenced a proceeding in Maryland state court to enforce the Maine order." Maine DHS has yet to dispute Roberts Complaint with an Answer.

In any event, the best evidence of the intent of the Maine DHS Petition, and of the Maryland court acting in response thereto, is in the prayer for relief, which requests *inter alia*:

> 1. Respondent be ordered to pay such sums per child per month as would be deemed fair and reasonable for the support of the named minor dependants.
> ... and ...
> 4. Such further relief be granted as this Court deems just and proper.

Also significant on this point is the evidence that, although jurisdiction for child support clearly was transferred from Maine to Maryland, jurisdiction for visitation continued in Maine as late as 1984, and Maine DHS could easily have still sought enforcement of the initial 1981 Maine judgment in the Maine court,

if they did not agree that the 1983 and 1984 Maryland judgments had modified the 1981 Maine judgment. It was only years later when bureaucrats who were not in the Maine and Maryland courtrooms in 1981, 1983 and 1984, and did not know or understand what had happened, initiated the current controversy, which continues to this day.

F. The *Rooker-Feldman* doctrine is also implicated in Roberts' case

The District Court 12(b)(6) dismissal judgment has the effect of directly reversing not one, but three, final and dispositive judgments of the Maryland state court. This dismissal directly contradicts the core principle of the *Rooker-Feldman* doctrine, i.e. that District Courts cannot act as appellate courts and undo final state court judgments. Given recent decisions of this Court on *Rooker-Feldman*, it is necessary for this Court to clarify the operation of the *Rooker-Feldman* doctrine in this case of first impression.

CONCLUSION

A writ of *certiorari* should be issued to review the judgment and opinion of the Fourth Circuit Court of Appeals. If *certiorari* is not granted, the Court runs the risk of perpetuating ongoing confusion and disparate application of a uniform law adopted in all fifty states. The Court would also run the risk of tacitly endorsing an unconstitutional construction of this law that, as applied, disregards the Full Faith and Credit Clause of the United States Constitution.

Respectfully submitted,

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